



DEPARTMENT OF VETERANS AFFAIRS

8320-01

PRIVACY ACT OF 1974; SYSTEM OF RECORDS

AGENCY: Department of Veterans Affairs (VA)

ACTION: Notice of Amendment to System of Records

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a (e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled "Veterans Appellate Records System-VA" (44VA01) established at 40 FR 38095 (8/26/75) and revised at 53 FR 46741-03 (11/18/88), 56 FR 15663-03 (4/17/91), 63 FR 37941-02 (7/14/98), 66 FR 47725-02 (9/13/01), and 70 FR 6079-02, (2/4/05). VA is amending the system by revising the Storage and Retention and Disposal sections and adding six routine uses.

DATES: Comments on the amendment of this system of records must be received no later than [Insert date 30 days after date of publication in the Federal Register]. If no public comment is received, the amended system will become effective [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to: Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours

of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273-9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Laura H. Eskenazi, Vice Chairman and Executive in Charge, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, DC 20420, (202) 632-4603.

SUPPLEMENTAL INFORMATION:

The Board of Veterans' Appeals (BVA, Board) proposes to make changes to the Storage and Retention and Disposal sections of this system of records to reflect current practice and add six routine uses.

Hearings are currently recorded digitally and the recordings stored indefinitely.

Some facilities may still need to record hearings on audio tape. In those instances, the tapes are sent to the Wilkes-Barre VA facility, where they are transcribed and, as in the past, the tapes are maintained for one year from the date of the hearing, after which time they are destroyed.

The first new routine use will permit the release of information from this system of records to representatives and Veterans Service Organizations. The representative will have to be of record and the information released must pertain only to a client. Veterans Service Organizations at the Board will have computer access to the Veterans Appeals Control and Locator System records of their clients. They will not be able to read any other records and will not be able to alter the records of their clients'. Since representatives are entitled to access

data pertaining to their clients, this computer access will save time and effort in the appropriate dissemination of this information.

The second new routine use will permit the Board to release information from this system of records to the Comptroller General, or his or her authorized representative, in the course of the performance of the duties of the United States General Accountability Office.

The third new routine use will permit disclosure of information to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for information relevant to DoJ's representation of the United States in legal proceedings, provided that such a release would be a use of the information that is compatible with the purposes for which the records were collected.

The fourth new routine use will permit the release of relevant information to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement and the information is necessary for the entities to complete their contractual obligations to VA.

The fifth new routine use permits disclosure to other Federal agencies to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their programs or operations.

The sixth new routine use permits VA to disclose information to appropriate agencies, entities, or persons when VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised, or the Department has determined that there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security of the system or other systems or programs.

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which the information was collected. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

Approved: October 9, 2013

Jose D. Riojas, Chief of Staff
Department of Veterans Affairs.

SOR# 44VA01

SYSTEM NAME: Veterans Appellate Records System-VA

SYSTEM LOCATION: Board of Veterans' Appeals, Department of Veterans Affairs (VA), 810 Vermont Avenue, N.W., Washington, DC 20420, at the Wilkes-Barre VA facility, 1127 East End Boulevard, Building 42, Wilkes-Barre, PA 18702, and with the Board's contractor, Promisel & Korn, Inc., 3228 Amberley Lane, Fairfax, VA 22031.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Veterans, other appellants, Veterans Law Judges, Board staff attorneys and Members of Congress.

CATEGORIES OF RECORDS IN THE SYSTEM:

The computer database entitled Veterans Appeals Control and Locator System (VACOLS) is a part of this system and can include electronically attached copies of Board of Veterans' Appeals decisions and remands; personal information on appellants and contesting parties including names, addresses, identifying numbers, phone numbers, service dates and issues on appeal; names, addresses and phone numbers of representatives, powers of attorney and attorney fee agreements; information on and dates of procedural steps taken in claims; records of and electronic copies of correspondence concerning appeals; diary entries, notations of mail received, information requests; transcripts of hearings; tracking information as to file location and employee productivity information. Material in this system that is not maintained in VACOLS includes verbatim digital recordings of hearings that are maintained indefinitely, microfiche

decision locator tables and indices to decisions from 1983 to 1994, and microfiche reels with texts of decisions from 1977 to 1989.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 7101(a), 7104, 5904.

PURPOSE(S):

Initial decisions on claims for Federal Veterans' benefits are made at VA field offices throughout the nation. Claimants may appeal those decisions to the Board of Veterans' Appeals. See 38 U.S.C. Chapter 71. The Board gathers or creates the records in this system in order to carry out its appellate function, to statistically evaluate the appellate process, and to evaluate employee performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. Disclosure to law enforcement personnel and security guards may be made in order to alert them to the presence of dangerous persons in VA facilities or at VA activities conducted in non-VA facilities.
2. VA may disclose on its own initiative any information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged

- with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.
3. A record from this system of records may be disclosed to a Veteran, claimant or a third party claimant (e.g., a Veteran's survivors or dependents) to the extent necessary for the development of that claimant's claim for VA benefits.
 4. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.
 5. Disclosure may be made to the National Archives and Records Administration (NARA) in records management inspections conducted under authority of Title 44 U.S.C.
 6. A record from this system (other than the address of the beneficiary) may be disclosed to a former representative of a beneficiary to the extent necessary to develop and adjudicate a claim for payment of attorney fees to such representative from past due benefits under 38 U.S.C. 5904 (d).
 7. Where VA determines that there is good cause to question the legality or ethical propriety of the conduct of a person or organization prospectively, presently or formerly representing a person in a matter before VA, a

record from this system may be disclosed, on VA's initiative, to any or all of the following: (1) Applicable civil or criminal law enforcement authorities; (2) a person or entity responsible for the licensing, supervision, or professional discipline of the person or organization prospectively, presently or formerly representing a person in a matter before VA; (3) to other Federal and State agencies and to Federal courts when such information may be relevant to the individual's or organization's provision of representational services before such agency or court. Names and home addresses of Veterans and their dependents will be released on VA's initiative under this routine use only to Federal entities.

8. Disclosure may be made to the VA-appointed representative of an employee, including all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.
9. Disclosure may be made to officials of the Merit Systems Protection Board, or the Office of Special Counsel, or both, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

10. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions of the Commission as authorized by law or regulation.
11. VA may disclose to the Federal Labor Relations Authority (FLRA), including its General Counsel, information from this system related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or the resolution of exceptions to arbitration awards when a question of material fact is raised and to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.
12. Disclosure of information in this system of records may be made to the United States Court of Appeals for Veterans Claims when requested by the Court to further the performance of its duties as delineated in Chapter 72 of Title 38 of the United States Code Annotated with respect to any action brought under that chapter.
13. A record from this system may be disclosed to a Service Organization where the Service Organization is the representative of record of the subject of the records to be released.
14. As permitted by the Privacy Act at 5 U.S.C.A. § 552a (b)(10), the Board will release information from this system of records to the Comptroller

General, or any of his or her authorized representatives, in the course of the performance of the duties of the United States General Accountability Office.

15. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.
16. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purpose of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

17. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.
18. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

Note: Any record maintained in this system of records, which may include information relating to drug abuse, alcoholism or alcohol abuse, infection with the

human immunodeficiency virus, or sickle cell anemia will be disclosed pursuant to an applicable routine use for the system only when permitted by 38 U.S.C. 7332.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is kept in a computer database entitled VACOLS and backed up on computer tape. Archived records that were created prior to expansion of the Board of Veterans' Appeals' electronic storage capability may be stored in filing folders or cabinets, microfiche, computer disks, or computer tape. Hearings before the Board are digitally recorded and stored indefinitely. Where a facility must use audio tape to record hearings, the recording is maintained for one year after which period it is destroyed. A transcript is made for each hearing held and is electronically attached to the record in VACOLS. Digital recordings of hearings are maintained on a back-up server. Under the Vital Records Schedule, electronic back-up tapes are updated quarterly. A back-up tape is transferred weekly to the Board's contractor for quick access back-up tape storage.

RETRIEVABILITY:

VACOLS records in this system may be retrieved by any searchable field in the VACOLS database. This system notice covers only information retrieved by an individual's name or other identifier. Archived material from this system that is not in VACOLS may be retrieved by Veteran's name, VA file number, or BVA archive citation number.

SAFEGUARDS:

Files are under custody of designated VA employees, including employees of the Board of Veterans' Appeals and its contractor, all of whom have a need to know the contents of the system of records in order to perform their duties. Access to VACOLS is strictly limited to reflect the need individual employees have for the different records in the system. Where a Veterans Service Organization office is located in a VA facility and has access to VACOLS through the Wide Area Network, that access is strictly limited to viewing records of current clients of the organization. No personal identifiers are used in statistical and management reports, and personal identifiers are removed from all archived Board of Veterans' Appeals decisions and other records in this system before VA makes them available to the public. Files kept by the contractor are in a locked safe in locked rooms in a secured building.

RETENTION AND DISPOSAL:

Records in this system, in VACOLS, and those collected prior to VACOLS' use as a repository are retained indefinitely as Category B Vital Records unless otherwise specifically noted. Under the Vital Records Schedule, electronic back-up tapes are destroyed by erasure upon receipt of the next quarterly tape set. Recordings of hearings will be made as described in Rule 714, 38 CFR 20.714, and transcriptions of recordings of hearings will be attached electronically in VACOLS. Electronic recordings of hearings will be retained for at least one year from the date of the hearing, giving the hearing subject the opportunity to challenge the accuracy of the transcript.

SYSTEM MANAGER(S) AND ADDRESS:

Chairman (01), Board of Veterans' Appeals, 810 Vermont Avenue, NW,
Washington, DC 20420.

NOTIFICATION PROCEDURES:

An individual desiring to know whether this system of records contains a record pertaining to him or her, how she or he may gain access to such a record, and how she or he may contest the content of such a record may write to the following address: Privacy Act Officer (01C1), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. The following information, or as much as is available, should be furnished in order to identify the record: Name of Veteran, name of appellant other than the Veteran (if any), and Department of Veterans Affairs file number. For information about hearing transcripts or tape recordings, also furnish the date, or the approximate date, of the hearing.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to information contained in this system of records may write or call the Board of Veterans' Appeals Freedom of Information Act Officer, whose address and telephone number are as follows:
Freedom of Information Act Officer (01C1), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

CONTESTING RECORD PROCEDURES:

(See notification procedures above.)

RECORD SOURCE CATEGORIES:

VA Claims, insurance, loan guaranty, vocational rehabilitation, education, hospital records, and outpatient clinic records folders and associated folders; Board of Veterans' Appeals records; data presented by appellants and their representatives at hearings and in briefs and correspondence; and data furnished by Board of Veterans' Appeals employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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